Filed 2/13/09 P. v. Bonner CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE, Plaintiff and Respondent, v. LARRY WAYNE BONNER, Defendant and Appellant.	C058808 (Super. Ct. No. CRF07183)

Defendant Larry Wayne Bonner pled guilty to three felonies: evading a police officer (Veh. Code, § 2800.2; count 1); leaving the scene of an accident (Veh. Code, § 20001, subd. (a); count 2); and resisting a police officer by force or threat of violence (Pen. Code, § 69; count 5). He also admitted having a prior "strike" conviction. (Pen. Code, §§ 211, 667, subds. (b)-(i), 1170.12.) Finally, he agreed to waive any potential issue under Penal Code section 654 (section 654) as to counts 1 and 5.

The People, in return, dismissed two misdemeanors charged as counts 3 and 4. (Veh. Code, §§ 23014, subd. (b) (driving with willful disregard for others' safety and causing bodily injury after a previous conviction for violating Veh. Code §§ 23103, 23104, 23109, 23152, or 23153); 14601.1, subd. (a)

(driving with a suspended or revoked license).) The People also dismissed pending case number F-08-129 and agreed not to refile previously dismissed case number F-07-343.[1]

Before taking defendant's plea, the trial court advised him that the maximum possible state prison term under the plea agreement was eight years and eight months, consisting of six years on count 1 (the upper term, doubled under the Three Strikes law), 16 months on count 2 (one-third the midterm, doubled), and 16 months on count 5 (one-third the midterm, doubled), all to run consecutively. Defendant and his counsel stated that they understood this possible outcome.

At sentencing, the trial court rejected defendant's arguments for a lesser sentence, including his claim that the sentence on count 2 should either be stayed pursuant to section 654 or run concurrently with the sentence on count 1. The court then sentenced defendant to eight years and eight months in state prison.

Defendant did not obtain a certificate of probable cause.

Defendant contends that the trial court erred by not staying sentence on count 2 under section 654. We requested supplemental briefing on whether defendant could raise this contention without having obtained a certificate of probable cause in light of the recent opinion of our Supreme Court in *People v. Cuevas* (2008) 44 Cal.4th 374 (*Cuevas*). We now

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[1] The record does not make clear what offenses were or might have been charged or what defendant's exposure might have been in these cases.

conclude that he may not do so. Therefore, we shall dismiss the appeal.

FACTS

According to the probation report and the parties' representations when defendant entered his plea, the factual basis for the plea is as follows:

On March 12, 2007, a California Highway Patrol officer attempted to contact a vehicle "spinning donuts" in a parking lot in Butte County. Defendant was driving, with Pamela Mundrick riding as a passenger. When defendant saw the patrol car, he sped off onto the highway, reaching speeds of up to 100 miles per hour, running stop signs, and recklessly passing other motorists. After the pursuit had covered 5.2 miles in less than four minutes, it ended in Yuba County when defendant missed a left turn and crashed into an embankment. The officer arrived at the crash scene in time to see defendant flee on foot and disappear into the woods. Hearing screaming from inside the crashed vehicle, the officer found Mundrick, who had suffered a broken back and a severed spinal cord in the accident. Defendant was arrested the next day.

DISCUSSION

"A defendant may not appeal 'from a judgment of conviction upon a plea of guilty or nolo contendere,' unless he has obtained a certificate of probable cause. ([Pen. Code,] § 1237.5, subd. (b); see *People v. Buttram* (2003) 30 Cal.4th 778, 790 [] (*Buttram*)[].) Exempt from this certificate requirement are postplea claims, including sentencing issues, that do not

challenge the validity of the plea. [Citations.] For example, 'when the claim on appeal is merely that the trial court abused the discretion the parties intended it to exercise, there is, in substance, no attack on a sentence that was "part of [the] plea bargain." [Citation.] Instead, the appellate challenge is one contemplated, and reserved, by the agreement itself.' (*Buttram, supra*, 30 Cal.4th at p. 786.)" (*Cuevas, supra*, 44 Cal.4th at p. 379.)

In *People v. Shelton* (2006) 37 Cal.4th 759 (*Shelton*), our Supreme Court held that when a plea agreement includes a sentence "lid" (the maximum sentence permitted under the agreement, which is less than the maximum exposure the defendant would otherwise face for the offenses admitted by his plea), "a challenge to the trial court's authority to impose the lid sentence is a challenge to the validity of the plea requiring a certificate of probable cause." (*Id.* at p. 763.) An appellate claim that a sentence violated section 654 challenges the validity of the plea, because it asserts that the trial court lacked authority to impose the agreed sentence. (*Ibid.*) Therefore, a defendant who has not obtained a certificate of probable cause may not raise a claim of section 654 error after receiving a lid sentence imposed under a plea agreement. (*Ibid*.)

In *Cuevas, supra*, 44 Cal.4th 374, the high court clarified that *Shelton*'s holding is not limited to agreed lid sentences: it also applies where the sentence imposed is the maximum possible for the offenses admitted by the defendant's plea, so

long as that is less than his maximum exposure under the original charges. In other words, if the defendant has bargained for and received the benefit of a reduction in the original charges in return for his plea, he may not raise a section 654 claim on appeal without obtaining a certificate of probable cause. (*Cuevas, supra*, 44 Cal.4th at pp. 376-377.)

Here, defendant bargained for and received such a benefit: the prosecutor dismissed two misdemeanor counts and a separate pending case and agreed not to refile another pending case. (The fact that the record does not reveal the magnitude of this benefit is immaterial.) To obtain this benefit, defendant entered his plea knowing that the offenses he was admitting exposed him to a maximum prison sentence of eight years and eight months; thus, by entering his plea, defendant acknowledged that the trial court could lawfully impose that sentence under the plea agreement.

"[T]he maximum possible sentence defendant faced was 'part and parcel of the plea agreement he negotiated with the People.' [Citation.]" (*Cuevas, supra*, 44 Cal.3d at p. 381.) "Defendant received what he negotiated and agreed to under the plea agreement, and he must abide by the terms of the agreement. [Citation.] In asserting that section 654 requires the trial court to stay any duplicative counts, defendant is not challenging the court's exercise of sentencing discretion, but attacking its *authority* to impose consecutive terms for these counts. This amounts to a challenge to the plea's validity, requiring a certificate of probable cause, which defendant

failed to secure. [Citation.] Therefore, his appeal based on [Penal Code] section 654 is barred. [Fn.]" (*Id.* at p. 384.)

DISPOSITION

The appeal is dismissed.

SIMS, J.

We concur:

SCOTLAND, P. J.

BUTZ, J.